

Immigration: Frequently Asked Questions on the State Criminal Alien Assistance Program (SCAAP)

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Summary

The State Criminal Alien Assistance Program (SCAAP) is a formula grant program that provides financial assistance to states and localities for correctional officer salary costs incurred for incarcerating “undocumented criminal aliens.” Currently, SCAAP funds do not cover all of the costs for incarcerating immigrants or foreign nationals. The program is administered by the Office of Justice Programs’ Bureau of Justice Assistance, located in the U.S. Department of Justice, in conjunction with the U.S. Department of Homeland Security. Between FY1995 and FY2009, a total of more than \$5 billion has been distributed to states in SCAAP funding.

Recent changes to SCAAP include reauthorization through FY2011 and the requirement that SCAAP reimbursements be used for correctional purposes only. Legislation introduced in the 111th Congress includes provisions that would extend the program through FY2014 and authorize appropriations at \$1 billion annually for FY2011-FY2014 (H.R. 2282); and would change SCAAP eligibility guidelines to reimburse states not only for criminal aliens convicted of two misdemeanors or a felony, but also for those charged with these crimes as well (S. 168). Funding for the program has also been included in the Commerce, Justice, Science and Related Agencies Appropriations Act of 2010 (H.R. 2847). H.R. 2847 as passed by the House on June 18, 2009, would appropriate \$300 million for SCAAP, and the Senate reported version would appropriate \$228 million for the program.

This report will be updated as warranted by legislative, funding, or policy developments.

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What Is SCAAP?

The State Criminal Alien Assistance Program (SCAAP) was created by §20301 of the Violent Crime Control and Law Enforcement Act of 1994,¹ and it is currently codified in §241(I) of the Immigration and Nationality Act (INA). The program is administered by the Bureau of Justice Assistance (BJA), which is part of the Department of Justice's (DOJ) Office of Justice Programs (OJP). The Department of Homeland Security (DHS) aids BJA in administering the program. SCAAP is designed to reimburse states and localities for correctional officers' salary costs incurred for incarcerating "undocumented criminal aliens." The INA defines the term "undocumented criminal alien" in the context of SCAAP to mean an alien who

(3)(A) has been convicted of a felony or two or more misdemeanors; and

(I) entered the United States without inspection or at any time or place other than as designated by the Attorney General;

(ii) was the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State or a political subdivision of the State; or

(iii) was admitted as a nonimmigrant and at the time he or she was taken into custody by the State or a political subdivision of the State has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under Section 248, or to comply with the conditions of any such status.²

Who Is Eligible to Receive SCAAP Payments?

Any state or locality that incurred costs for incarcerating "undocumented criminal aliens" is eligible to apply for SCAAP funding. Currently, this includes all 50 states, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, and more than 3,000 counties and cities. For states and localities to qualify for SCAAP reimbursement, aliens under their jurisdiction must have at least one felony or two misdemeanor convictions under state or local law and be incarcerated for at least four consecutive days.

Although the program is intended to compensate states and localities for correctional officers' salary costs, funds provided through SCAAP payments until recently have been unrestricted and could be used for any lawful purpose. In some instances, SCAAP funds were used for projects such as interoperable communications systems, inmate medical care, and construction. In many instances, funds were used for the jurisdiction's criminal justice system or jails.

What Are the Award Criteria?

The criteria for the amount of SCAAP funds received have evolved over time. Prior to FY2003, the criteria were based on factors such as average cost per inmate multiplied by the number of eligible inmates and the total number of foreign-born inmates claimed. In many cases, this resulted in reimbursement for ineligible aliens such as naturalized citizens and legal permanent residents (LPRs). The formula is determined administratively by DOJ. In FY2007, the SCAAP reimbursement formula was determined through a multi-step process, as follows.

¹ P.L. 103-322.

² 8 U.S.C. §1231(i)(3).

- DOJ determined a per diem rate per inmate, using a combination of correctional officers' annual salary costs and the total number of all inmate days. (The average inmate per diem for FY2007 was \$30.30);
- Immigration and Customs Enforcement (ICE) in DHS analyzed applicant inmate records submitted by the applicants, and provided BJA with a report reflecting the number of eligible, ineligible, unknown, and invalid inmates;
- The number of inmate days and a percentage of unknown days were totaled, then multiplied by the applicant's per diem rate;³
- The value of each applicant's correctional officers' salary costs associated with its eligible and credited unknown inmate days was totaled. (This value reflected the maximum allowable reimbursement); and
- The values were compared with the annual appropriation and a percentage factor was developed, and the percentage factor was applied uniformly to all jurisdictions. The reimbursement factor for FY2007 SCAAP awards was approximately 42%.

What Is the Funding Level for SCAAP?

Funding for SCAAP has been appropriated by Congress annually since 1995. Levels of funding for the program have fluctuated from \$130 million in FY1995 to \$565 million in FY2002 and have remained relatively consistent between \$400 and \$410 million for FY2006 through FY2009.⁴ The Administration's FY2010 budget did not request funding for this program.

How Much Money Have the States Received in SCAAP Awards?

From FY2000 to FY2008, SCAAP reimbursements totaled approximately \$4 billion. As **Table 1** illustrates, California historically has received the largest annual awards, having received more than \$1.7 billion since the program's inception. Florida, Illinois, New York, and Texas have consistently received larger awards as well, with smaller awards going to states such as West Virginia, Vermont, North Dakota, and the U.S. territories.

Recent Legislation

In 2005, SCAAP was reauthorized through FY2011, and a provision was added that required SCAAP reimbursement funds be used for correctional purposes only.⁵ Legislation had been introduced in previous Congresses that would have modified the program to include covering costs for indigent defense, translators, criminal aliens charged with two misdemeanors or a

³ The percentage used for unknown dates was determined by a sliding scale developed by ICE. This scale gave credit to each jurisdiction by type. Cities were credited at 60%, states at 65%, and counties at 80% of their unknown inmate days. The result was considered the correctional officers' salary costs for the reporting period.

⁴ Data provided by DOJ does not reconcile differences between appropriations and total awards.

⁵ P.L. 109-162. According to DOJ, correctional purposes include salaries for corrections officers, overtime costs, performance-based bonuses, corrections work force recruitment and retention, construction of corrections facilities, training/education for offenders, medical and mental health services, prison industries, and pre-release/reentry programs.

felony, and limited reimbursement to border states and states with large numbers of unauthorized aliens.

In the 111th Congress, legislation has been introduced to reauthorize the program until FY2014 (H.R. 2282), and to allow costs related to criminal aliens charged with specified crimes to be considered for SCAAP reimbursement (S. 168). The Administration's FY2010 budget request did not include funding for SCAAP; however, funding for the program was included in the Commerce, Justice, Science and Related Agencies Appropriations Act of 2010 (H.R. 2847). H.R. 2847 as passed by the House on June 18, 2009, would appropriate \$300 million for SCAAP, and the Senate reported version would appropriate \$228 million for the program.

Table I. SCAAP Awards by State: FY2000-FY2008

State	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	Total
Alabama	\$384,085	\$334,040	\$317,951	\$109,483	\$71,952	\$58,938	\$86,086	\$155,855	\$169,879	\$1,688,269
Alaska	\$265,995	\$494,888	\$331,460	\$1,040	\$33,417	\$26,553	\$0	\$159,465	\$173,805	\$1,486,623
American Samoa	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$18,780	\$0	\$18,780
Arizona	\$18,117,905	\$23,814,068	\$24,183,895	\$9,325,574	\$9,083,367	\$256,029	\$17,237,391	\$18,444,399	\$17,485,657	\$137,948,285
Arkansas	\$214,006	\$318,863	\$392,912	\$165,629	\$195,972	\$14,370,489	\$348,884	\$424,390	\$518,818	\$16,949,963
California	\$240,784,042	\$225,683,084	\$220,241,046	\$95,304,541	\$111,899,215	\$121,110,638	\$143,182,593	\$151,468,747	\$161,747,578	\$1,471,421,484
Colorado	\$7,933,462	\$8,246,560	\$11,191,319	\$4,394,361	\$5,791,648	\$5,009,986	\$7,220,622	\$7,058,713	\$6,886,163	\$63,732,834
Connecticut	\$2,237,030	\$1,778,579	\$1,590,639	\$802,045	\$900,356	\$779,697	\$1,164,248	\$1,251,210	\$1,528,517	\$12,032,321
Delaware	\$202,591	\$211,983	\$228,963	\$140,799	\$131,263	\$132,951	\$241,756	\$165,079	\$126,442	\$1,581,827
District of Columbia	\$5,051,620	\$780,571	\$449,547	\$88,517	\$44,472	\$81,762	\$34,310	\$114,815	\$237,806	\$6,883,420
Florida	\$30,279,180	\$28,623,740	\$27,956,315	\$11,188,630	\$14,267,545	\$15,455,194	\$23,258,386	\$24,198,980	\$22,950,130	\$198,178,100
Georgia	\$3,429,152	\$3,400,246	\$4,199,593	\$1,833,595	\$2,191,187	\$1,861,952	\$3,131,979	\$2,854,481	\$2,832,285	\$25,734,470
Guam	\$0	\$0	\$282,630	\$0	\$0	\$204,042	\$174,587	\$238,166	\$316,975	\$1,216,400
Hawaii	\$693,832	\$454,637	\$325,683	\$125,831	\$171,317	\$195,595	\$314,332	\$330,477	\$324,261	\$2,935,965
Idaho	\$910,736	\$1,138,652	\$1,254,382	\$604,530	\$699,690	\$607,237	\$955,338	\$848,127	\$826,516	\$7,845,208
Illinois	\$9,811,412	\$14,396,351	\$15,788,246	\$5,476,520	\$3,338,261	\$7,539,603	\$11,426,315	\$11,715,176	\$11,592,051	\$91,083,935
Indiana	\$717,901	\$993,131	\$925,170	\$428,234	\$471,650	\$399,860	\$788,471	\$821,584	\$1,067,550	\$6,613,551
Iowa	\$852,754	\$806,377	\$1,640,776	\$467,103	\$673,314	\$477,057	\$628,497	\$624,272	\$687,653	\$6,857,803
Kansas	\$1,618,764	\$1,329,405	\$1,559,101	\$624,943	\$757,840	\$630,531	\$795,380	\$921,174	\$888,010	\$9,125,148
Kentucky	\$167,347	\$243,779	\$195,519	\$66,378	\$232,297	\$236,959	\$215,756	\$184,997	\$162,370	\$1,705,402
Louisiana	\$742,606	\$259,990	\$316,449	\$136,677	\$180,003	\$127,453	\$166,235	\$147,153	\$162,348	\$2,238,914
Maine	\$148,731	\$290,227	\$266,963	\$85,545	\$50,676	\$69,199	\$146,384	\$254,793	\$153,401	\$1,465,919
Maryland	\$1,101,344	\$2,554,163	\$2,878,552	\$2,071,715	\$2,597,252	\$2,090,970	\$3,048,492	\$2,964,421	\$3,165,183	\$22,472,092
Massachusetts	\$14,921,272	\$10,548,800	\$13,121,495	\$7,949,202	\$6,991,154	\$7,237,615	\$9,868,848	\$8,356,752	\$6,766,760	\$85,761,898

State	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	Total
Michigan	\$2,922,627	\$2,536,786	\$2,900,950	\$1,209,417	\$1,719,837	\$1,325,797	\$2,427,426	\$2,363,697	\$2,155,861	\$19,562,398
Minnesota	\$2,607,523	\$1,524,930	\$1,835,712	\$1,465,361	\$1,782,759	\$1,327,202	\$1,725,321	\$1,697,615	\$1,825,214	\$15,791,637
Mississippi	\$43,903	\$144,936	\$199,224	\$26,727	\$40,160	\$25,579	\$61,882	\$43,427	\$30,866	\$616,704
Missouri	\$830,002	\$646,203	\$897,654	\$386,938	\$479,348	\$416,546	\$540,936	\$525,609	\$545,012	\$5,268,248
Montana	\$25,875	\$63,184	\$43,225	\$28,201	\$2,792	\$11,374	\$23,248	\$21,848	\$43,101	\$262,848
Nebraska	\$780,215	\$1,198,700	\$699,769	\$755,876	\$1,072,982	\$976,315	\$1,303,590	\$592,572	\$1,192,645	\$8,572,664
Nevada	\$1,909,146	\$4,543,847	\$4,333,739	\$2,761,068	\$3,591,704	\$4,363,186	\$6,650,121	\$6,133,754	\$6,803,996	\$41,090,561
New Hampshire	\$351,286	\$260,936	\$366,323	\$159,718	\$207,721	\$173,978	\$215,373	\$201,618	\$130,838	\$2,067,791
New Jersey	\$15,440,674	\$11,749,542	\$10,944,836	\$5,507,306	\$7,901,622	\$6,236,118	\$11,725,765	\$12,004,534	\$13,621,928	\$95,132,325
New Mexico	\$1,318,315	\$1,672,821	\$2,331,916	\$1,482,546	\$678,399	\$1,086,188	\$1,893,593	\$1,599,083	\$1,429,376	\$13,492,237
New York	\$114,278,560	\$94,768,921	\$97,164,970	\$43,799,041	\$56,995,435	\$42,814,813	\$61,437,817	\$53,560,754	\$48,944,327	\$613,764,638
North Carolina	\$665,120	\$3,611,314	\$5,262,180	\$2,552,349	\$3,673,894	\$3,725,191	\$7,104,671	\$7,420,671	\$8,272,056	\$42,287,446
North Dakota	\$2,248	\$19,069	\$26,004	\$8,661	\$25,345	\$36,927	\$38,251	\$35,698	\$43,990	\$236,193
Ohio	\$1,475,550	\$939,853	\$1,211,474	\$688,865	\$868,204	\$747,959	\$1,264,057	\$1,213,209	\$1,208,443	\$9,617,614
Oklahoma	\$1,225,790	\$1,525,286	\$1,020,718	\$799,797	\$819,995	\$748,673	\$882,474	\$1,079,685	\$1,317,206	\$9,419,624
Oregon	\$4,972,603	\$6,814,968	\$6,528,641	\$3,182,206	\$1,341,763	\$4,474,199	\$6,680,966	\$6,903,326	\$8,364,587	\$49,263,259
Pennsylvania	\$4,306,272	\$2,273,565	\$2,683,207	\$1,266,741	\$1,693,912	\$1,400,056	\$2,110,318	\$2,134,907	\$2,145,759	\$20,014,737
Puerto Rico	\$1,250,510	\$632,034	\$683,254	\$374,631	\$158,903	\$319,429	\$380,967	\$215,647	\$454,789	\$4,470,164
Rhode Island	\$1,649,030	\$3,216,989	\$1,794,449	\$614,869	\$760,584	\$863,995	\$1,009,514	\$1,150,907	\$1,184,646	\$12,244,983
South Carolina	\$873,493	\$889,885	\$963,588	\$298,985	\$432,428	\$408,782	\$715,669	\$842,093	\$808,530	\$6,233,453
South Dakota	\$81,730	\$70,533	\$80,294	\$52,123	\$124,516	\$83,214	\$167,845	\$124,578	\$125,426	\$910,259
Tennessee	\$59,962	\$273,331	\$293,726	\$243,227	\$474,948	\$451,609	\$683,966	\$616,783	\$773,486	\$3,871,038
Texas	\$57,262,334	\$45,270,617	\$51,677,007	\$20,950,723	\$24,740,836	\$26,453,985	\$28,465,107	\$29,060,872	\$28,521,543	\$312,403,024
Utah	\$2,713,913	\$2,188,992	\$2,256,785	\$1,124,101	\$1,385,961	\$1,288,270	\$1,915,823	\$1,860,339	\$1,698,490	\$16,432,674

State	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	Total
Vermont	\$32,032	\$53,792	\$40,546	\$24,412	\$32,118	\$14,437	\$24,435	\$19,886	\$34,890	\$276,548
Virgin Islands	\$0	\$620,185	\$945,868	\$350,908	\$408,132	\$269,825	\$156,688	\$288,207	\$348,269	\$3,388,082
Virginia	\$6,099,707	\$5,328,910	\$6,487,119	\$1,770,301	\$2,793,365	\$2,615,423	\$4,743,533	\$3,128,657	\$5,122,073	\$38,089,088
Washington	\$5,576,121	\$13,679,341	\$8,173,908	\$3,627,398	\$4,300,435	\$3,548,103	\$4,593,301	\$4,593,756	\$4,742,360	\$52,834,723
West Virginia	\$17,644	\$9,343	\$16,809	\$5,607	\$5,824	\$6,495	\$686	\$0	\$0	\$62,408
Wisconsin	\$3,672,572	\$3,422,914	\$3,508,625	\$2,982,127	\$2,194,993	\$1,890,073	\$3,186,393	\$3,220,387	\$3,416,845	\$27,494,929
Wyoming	\$219,435	\$0	\$160,919	\$108,874	\$121,529	\$79,074	\$81,420	\$73,110	\$82,428	\$926,789
Total	\$573,249,959	\$536,653,861	\$545,172,045	\$239,999,996	\$281,604,292	\$287,143,125	\$376,646,046	\$376,449,235	\$386,159,138	\$3,603,077,697

Source: CRS representation of SCAAP award data compiled by the Department of Justice, Bureau of Justice Assistance.

Note: Data provided by DOJ does not reconcile differences between appropriations and total awards.

Author Information

Karma Ester
Information Research Specialist

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